NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PATRICK S. BILLS, Plaintiff - Appellant, v. CITY OF RIALTO; RIALTO POLICE DEPARTMENT; RANDY DEANDA; CHRIS MARTINEZ, Defendants - Appellees.	No. 03-56212 D.C. No. CV-01-00894-VAP MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Argued and Submitted March 11, 2005
Pasadena, California

Before: GIBSON,[**] GRABER, and CALLAHAN, Circuit Judges.

Plaintiff Patrick S. Bills sued the City of Rialto, its police department, and two of its officers under 42 U.S.C. § 1983, as well as under state law. He made three § 1983 claims: unlawful search, unlawful detention, and excessive force. The

[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**] The Honorable John R. Gibson, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

district court granted summary judgment to Defendants on the unlawful search and unlawful detention claims, on the ground that Defendants were entitled to qualified immunity. Saucier v. Katz, 533 U.S. 194 (2001). The excessive force claim and the state law claims went to trial. The jury found in favor of Defendants. Plaintiff timely appealed, and we affirm.

1. Unlawful search claim.

We review de novo a grant of summary judgment. Boyd v. Benton County, 374 F.3d 773, 778 (9th Cir. 2004).

A reasonable officer could have believed that both probable cause and exigent circumstances existed. See United States v. George, 883 F.2d 1407, 1411 (9th Cir. 1989) (establishing those elements to justify a warrantless search of a home). Chavez was wanted for a triple homicide. Plaintiff's wife is Chavez' sister, and the police knew that Chavez was not at his parents' house. A reasonable officer could have believed that the relationship between the parties, and the timing of Plaintiff's taking Alvarez to his house, established probable cause to believe that Chavez was at Plaintiff's house.

As to exigency, the officers reasonably could have believed that they had to enter Plaintiff's home to prevent harm to innocent persons. They reasonably could have believed not only that Chavez was at Plaintiff's house, but also that he knew

or was likely to learn of his imminent capture. Plaintiff's children were in the house, yet they failed to answer telephone calls from the police.

2. Evidentiary rulings.

We review evidentiary rulings for abuse of discretion. United States v. Hanna, 293 F.3d 1080, 1085 (9th Cir. 2002).

Plaintiff claims that the district court prevented him from arguing that the handcuffs were left on too long. But the court did allow him to testify that he remained handcuffed for at least an hour. The record reveals no error.

Plaintiff also claims that the court prevented him from arguing that the officers' motive for ignoring his complaints of pain was to secure his consent to search his house. He cites a ruling sustaining a relevance objection to Plaintiff's testimony that he gave consent to search, but felt that he had no choice. The court already had decided the unlawful search claim on summary judgment, a ruling that we have just held was proper. Any evidentiary error thus was harmless.

3. Unlawful detention.

The outcome of Plaintiff's unlawful detention claim is controlled by a combination of two things: recent Supreme Court precedent, and the jury's defense verdict on the excessive force claim.

In Muehler v. Mena, 125 S. Ct. 1465 (2005), police detained Mena in handcuffs while executing a search warrant. The Supreme Court held that Mena's detention in handcuffs for the length of the search was permissible despite the absence of an immediate threat. Id. at 1469. Plaintiff in this case was detained for "over an hour." Plaintiff Mena was detained in handcuffs for two to three hours. Id. at 1971.

Although in Mena the police had a warrant, id. at 1469, while here there was no warrant, that fact does not bear on the reasonableness of the length of detention. As we have just held, a valid exception to the warrant requirement was established here.

Plaintiff also proposes to distinguish Mena on the ground that Mena's handcuffs were correctly applied, id. at 1470, whereas here the handcuffs were applied in a painful and improper manner. Plaintiff argues that his prolonged detention in a gratuitously painful state distinguishes Mena and that no reasonable officer could have believed that such a detention was constitutional. The difficulty for Plaintiff is that the jury already found that Defendants did not use excessive force upon Plaintiff. Accordingly, we are left with a bare claim that Defendants detained Plaintiff for too long, a claim that does not survive Mena. Any error by the district court in not submitting the unlawful detention claim to the jury was

harmless. See Tennison v. Circus Circus Enters., 244 F.3d 684, 691 (9th Cir. 2001) (holding that the plaintiffs were not prejudiced by any error in granting summary judgment to the defendants on the plaintiffs' claims for intentional infliction of emotional distress, because those claims were predicated on the same facts and similar legal inquiries as their sexual harassment claims, as to which the jury found against the plaintiffs).

AFFIRMED.